

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

MUR: No. 04-0020

RECOMMENDATION OF EXTERNAL INVESTIGATIVE CONSULTANT

On behalf of the Citizens Clean Elections Commission ("Commission"), the External Investigative Consultant hereby provides his recommendation that the Commission find no probable cause to MUR. No. 04-0020.

I. Procedural Background

An external complaint was filed against David Gowan ("Respondent"), a participating candidate for State Representative, District 30, on September 13, 2004. The complaint alleged that Respondent failed to pay for signs and violated A.R.S. 16-948(C) by failing to identify on his campaign finance reports the full name and street address of persons providing goods and services to his campaign. Exhibit A. In addition, Respondent was randomly selected for an audit of his Pre-Primary Campaign Finance Report, which was conducted independently by Miller, Allen & Co. The auditor's report found that the Respondent failed to keep copies of deposits and early contribution information, or failure to maintain a petty cash account.

Respondent responded to the amended complaint on September 15 and October 2, 2004, which included attached invoices for the payments in question to Constantin Querard. The External Investigative Consultant recommended that the Commission find reason to believe a violation occurred because Respondent did not sufficiently detail the payments in question on his campaign finance report. Exhibit B. On May 26, 2005, the Commission found reason to believe a violation had occurred and issued an Order of Compliance on June 3, 2005, requiring 14 days to comply. Exhibit C.

On August 5, 2005, the Commission found no probable cause that Respondent failed to meet books and records requirements. The Commission also found no probable cause that he failed to maintain a petty cash account. The Commission, however, found probable cause that Respondent violated A.R.S. 16-948(C). Exhibit D. On August 26, 2005, the Commission issued an Order and Notice of Appealable Agency Action assessing a \$10,000 civil penalty. Exhibit E. Respondent requested an informal settlement conference with a Commission Representative and a hearing with the Office of Administrative Hearings should a settlement not be reached.

II. Alleged Violations

Respondent's originally filed campaign finance reports showed that the campaign wrote checks to Constantin Querard totaling over \$26,000, which is more than 70% of the

entire spending by the committee. For this major part of the committee's expenditures the name and address of the person actually providing goods or services to Respondent's campaign, and the compensation that person received, was not disclosed – only the middleman was disclosed.

On October 4, 2005, the Commission designated Commissioner Tracey Bardorf as the Commission Representative regarding MUR 04-0020. At its regularly scheduled Commission meeting on November 3, 2005, Commissioner Bardorf reported to the Commission that she met with Respondent and Respondent's counsel. Per November 3, 2005 Commission meeting transcripts, Commissioner Bardorf agreed to allow Respondent a 45-day extension, until December 15, 2005, where in that time he would obtain the materials from Mr. Querard to be able to amend his campaign finance reports to include the required level of detail. Both parties agreed to the extension in hopes that the amended report would satisfy the reporting requirement and thus the Commission would be able to dismiss the matter without going any further. They also agreed to postpone the Administrative Hearing pending Commission approval of the campaign finance reports.

On December 15, 2005, Respondent's counsel requested more time, until December 19, 2005, to amend the campaign finance reports since he was waiting on detailed information from his consultant. Respondent's counsel agreed to provide his amended reports and did so on December 19, 2005. Exhibit F.

III. Recommendation

As External Investigative Consultant who investigated the matter and advised the Commission in this matter, I am satisfied with the level of detail in the amended campaign finance report provided by the Respondent which is required under the provisions of A.R.S. 16-948(C). Accordingly, I recommend to the Commission that my probable cause recommendation be withdrawn and this matter be closed.

Dated this 20th day of January, 2006

By: _____
L. Gene Lemon, External Investigative Consultant